IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 2ND FEBRUARY 2007 / 13TH MAGHA 1928

CRP.No. 107 of 2007()

AGAINST THE ORDER DATED 08/12/2006 IN EA.99/06,EP.45/06 IN OS.468/2003 of FAMILY COURT,KOLLAM

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REVN. PETITIONER: JUDGMENT DEBTOR/PLAINTIFF

DELIX BENANCE,
D/O.MARY ANNEXURE, KOCHUVEEDU,
THEKKUMBHAGOM, MUNDAKKAL, KOLLAM DISTRICT.

BY ADV. SRI.P.A.NOOR MUHAMMED
SRI.C.K.PRASAD

RESPONDENTS: DECREE HOLDERS/DEFENDANTS 2 AND 3

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1. REV.FR.JOHN EUDES FERNS,
S/O.JOSEPH FERNS, GREEN VILLE, THEKKUMBHAGOM,
KOLLAM TALUK, KOLLAM DISTRICT.

2. REETHA FERNZ,
S/O.VALLERIAN, GREEN VILLE, THEKKUMBHAGOM,
MUNDAKKAL VILLAGE, KOLLAM.

BY ADV. SRI.K.SUBASH CHANDRA BOSE

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 02/02/2007, THE COURT ON 02/02/2007 PASSED THE FOLLOWING:

M.N.KRISHNAN, J.

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C.R.P.NO.107 OF 2007

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Dated this the 2nd day of February 2007

ORDER

This revision petition is preferred with a prayer to call for the records in E.P.45/06 and to set aside the order dated 8-12-2006 passed therein by the Family Court to vacate delivery of the possession of the property and to direct the family court not to proceed with the execution petition without disposing of the petitioner's suits on merits. The following are the admitted facts. The present revision petitioner has instituted a suit and that has been dismissed for default and an application is pending for restoration of the case. Meanwhile as per the orders in I.A.2481/03 and I.A.2482/03 on 15th December 2005 the Family Court ordered the plaintiff to surrender back possession of the suit property to respective defendants 2 and 3 within a period of two weeks from 15-12-2005 and report the surrender to the court. The court also allowed the defendants in case of default to obtain possession through court. The learned counsel appearing for respondents has made available the order passed in the said I.As. A perusal of the said order would reveal that on the basis of an order of injunction, the present plaintiff got into

the property and the court found that it was by suppression of material facts and therefore in order to enable the parties entitled to be in possession the court invoked its inherent power and by virtue of mandatory injunction defendants 2 and 3 were directed to be put in possession of the property. The court considered the entire question in those two applications and such a direction was given. So by virtue of the order passed what the court did was to restore the status quo and it is an implementation of that order for which now the execution court has passed an order to put the defendants in possession of the property.

Learned counsel for the revision petitioner submits before me that the Family Court was wrong in directing the property to be put in possession when an application for restoration is filed and he relies upon order 21 rule 29 of the Civil Procedure Code. The said rule deals with a question were a suit is pending in any court. So far as this case is concerned in the eye of law there is no suit pending before any court and only application for restoration of suit dismissed for default is pending. It has also to be stated that against the order passed in I.A.2481/03 and

I.A.2483/03 the plaintiff in the suit preferred a writ before the High Court of Kerala which ended in dismissal and it is submitted that special leave petition is pending before the apex court. It is conceded that there is no order passed by the apex court staying the operation of the order in I.A.2481/03 and I.A.2483/03. It has to be stated that the peculiar circumstances under which the court had to pass an order in I.A.2481/03 and I.A.2483/03 has to be taken seriously note of by the courts. When an order is obtained by a party behind somebody suppressing the material facts and the court later finds it out it is obligatory on the part of the court to restore justice to the party and it was only in that way the Family Court directed the plaintiff to put defendants 2 and 3 in possession of the property. The judicial discretion exercised by the Family Court has been confirmed by this court in the writ petition filed before it. It is also stated that an application for restoration is pending before the family court from 2005 onwards it is party to have the application for restoration disposed of early, it for that party to press that court or move appropriate authority for getting matter disposed of as early as possible. So far as other matter is

concerned even if suit is pending, court has passed an interim mandatory injunction only to safeguard the interests of the defendants 2 and 3 because the court found that plaintiff by suppressing the material facts obtained an injunction and it was on the basis of that order of the court that the plaintiff got into possession of the property. Therefore, one cannot find fault with the family court and it had exercised its discretion most judiciously and directed the plaintiff to put back the defendants in possession of the property. Therefore, now the attempt of the plaintiff to get the executions stalled by filing the writ petition cannot be entertained. The order passed by the family court is absolutely in order and strictly in accordance with law. I find there is no merit in the CRP and is therefore dismissed.

M.N.KRISHNAN, JUDGE

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